

BAIL SLIP

The accuse viz, Ekanathan is directed to be released on bail as per order of this Court dt:27.04.2009 and made in MP.NO.10 of 2009 in Crl.A.No.500 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.500 of 2008

Ekanathan

... Appellant/Accused

vs.

State Rep. By
The Inspector of Police,
Ambur Town Police Station
(Crime No.333 of 2003)

... Respondent
/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.305 of 2004 dated 8.8.2005 on the file of the Principal Sessions Judge, Vellore.

For appellant : Mr.M.G.Sankaran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 8.8.2005 passed in Sessions Case No.305 of 2004 by the Principal District and Sessions Court, Vellore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused has received money from the mother of the deceased by way of debt. On 3.6.2003, the deceased and his mother have met the accused and demanded money, but the accused has firmly refused to discharge the debt. On 4.6.2003 at about 12.45 p.m, in front of house of one Kanagaraj, the accused has attacked the deceased by using a Knife and thereby caused vital injuries. After occurrence, the then injured (deceased) has been admitted in Government Hospital, Ambur where he has given a statement to the

concerned Sub Inspector of Police (P.W.12) and the same has been registered in Crime No.333 of 2003.

3. On receipt of the complaint, the Investigating Officer, viz., P.W.13 has taken up investigation and examined connected witnesses. On 9.6.2003, the then injured has passed away and subsequently he changed sections of law and also made arrangements to conduct autopsy on the body of the deceased and accordingly, the Doctor by name Dr.Chittibabu (P.W.10) has conducted Post Mortem and he found the following external and internal injuries:-

- "1) ABM on left collar bone
- 2) ABM Right side of the chest

The body was first seen by the undersigned at 2.45 PM on 10.6.2003. Its condition then was R.M.present in all the four limbs (kept in (NC)). Post mortem commenced at 2.45 p.m on 10.6.2003. Appearances found at the post-mortem patient injuries sutured Laprtomy wound about 8 inches in length extending from XY phi sternum to the umblique in the midline

2) Drainage tube opening 1x1 cm right side of the abdomen. On exploration of wound No.1. Yellowish tinged serosanguinous material seal over the omentum and in the peritoneal cavity. Two areas of greater omentum sutured (surgical procedure) were observed, other parts of abdomen canal normal.

Internal examination:

Skull-bone normal, Brain -1400g; Thorax-rib cauge normal , Heart - 300gm, Lungs-600gm each. abdomen-viscera-congested (c/s), hyoid bone - intact"

The Post Mortem Certificate has been marked as Ex.P.10. After completing the investigation, the Investigating Officer, Viz. P.W.13, has filed a final report on the file of Judicial Magistrate Court, Ambur and the same has been taken on file in P.R.C.No.21 of 2003.

4. The Judicial Magistrate Court, Ambur, after considering the facts that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the court of Sessions, Vellore Division and the same has been taken on file in Sessions Case No.305 of 2004.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed a charge against the accused under Section 302 of the IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exhibits P.1 to 20 and Material Objects 1 to 4 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and also evaluating the available evidence on record has found the accused guilty under Section 304(I) of the IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has contended that the mother of the deceased has been examined as P.W.1 and his sister by name Arul Mozhi has been examined as P.W.2 and both of them are not eye witnesses and the trial court has rightly discarded their views and apart from P.Ws.1 and 2, on the side of the prosecution, the other eye witnesses have been examined, viz, P.W.3 and P.W.7 and even P.Ws.3 and 7 have stated in their evidence that prior to occurrence, a scuffle has arisen between the deceased and accused and the trial court has failed to scrutinize the evidence given by P.Ws.3 and 7 and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor has contended that the deceased himself has given a statement and the same has been registered in Crime No.333 of 2003 and the said statement has been marked as Ex.P.12, wherein it has been clearly mentioned about the motive for occurrence and also the details of attack made by the accused on the person of the deceased and since the deceased has passed away on 9.6.2003 and that too, due to injuries caused by the accused, Ex.P.12 can be treated as a Dying Declaration and apart from Ex.P.12, P.Ws.3 and 7 have given clear evidence to the effect that in the place of occurrence, the accused has attacked the deceased and the trial court, after considering the evidence given by P.Ws. 3 and 7 and evidentiary value of Ex.P.12, has rightly invited conviction and sentence against the appellant/accused under section 304(I) of IPC and therefore, the conviction and sentence passed by the trial court need not be set aside.

11. It is seen from the records that the occurrence has taken place on 4.6.2003 and immediately after occurrence, the then injured (deceased) has been admitted in Government Hospital, where he has given Ex.P.12 statement and the same has been registered in Crime No.333 of 2003. In Ex.P.12, it has been clearly stated about the motive of occurrence and also the details of attack alleged to have been made by the accused on the person of the deceased. Further, it is seen from the records that only due to injuries sustained by the then injured, on 9.6.2003 he passed away. Since only due to injuries alleged to have been caused by the accused the defacto complainant has passed away, Ex.P.12 can be treated as a Dying Declaration and no corroborative evidence is required. Apart from Ex.P.12, P.Ws.3 and 7 have given clear evidence to the effect that in the place of occurrence, the accused has attacked the deceased. Since Ex.P.12 can be treated as a Dying Declaration, no corroborative evidence is required under section 32(1) of the Indian Evidence Act, 1872 and since P.Ws.3 and 7 have given cogent evidence with regard to occurrence and also details of attack made by the appellant/accused on the person of the deceased, the Court can easily come to a conclusion that in the place of occurrence, the accused has attacked the deceased by using a Knife and only due to his overtacts, the deceased has passed away. Therefore, it is quite clear that the prosecution has clearly established the guilt of the accused punishable under section 304(I) of IPC.

12. The learned counsel appearing for the appellant/accused has contended that the deceased and accused are closely related to each other and at the time of the occurrence, the accused has attained 43 years of age and that the entire occurrence has taken place on the spur of moment and therefore, some leniency may be shown in awarding sentence.

13. Considering the close relationship between the accused and deceased and also considering that the entire occurrence has taken place on the spur of moment, this Court is of the view to modify the sentence imposed against the appellant/accused as stated infra and to that extent, the present Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction passed against the appellant/accused in S.C.No.305 of 2004 by the trial court is confirmed. However, the quantum of sentence imposed against him under section 304 (I) of IPC is modified as follows:

"The appellant/accused is sentenced to undergo five years rigorous imprisonment instead of ten years rigorous imprisonment. No modification in respect of fine amount. If the appellant/accused is not in duress, the trial court is directed to take appropriate steps to imprison him to serve out the remaining period of sentence."

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To :

- 1.The Principal Sessions Judge, Vellore
2. The Inspector of Police,
Ambur Town Police Station
3. The Public Prosecutor, High Court, Chennai
- 4.The Judicial Magistrate
Ambur Vellore District
- 5.The Chief Judicial Magistrate
Vellore (for Information)

- 6.The Superintendent, open Jail
Coimbatore ondipudur, Singanallur(via)
Coimbatore

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Cr1.A.No.500 of 2008

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